Malaysian French Bank Bhd v Abdullah bin Mohd Yusof & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO C2329 OF 1984
ZAKARIA YATIM J
30 OCTOBER 1990

Civil Procedure — Judgment in default of appearance — Application to set aside — Whether there is an affidavit of merits

Contract — Bank guarantee — Whether induced by undue influence — Whether plaintiff was in position to dominate the will of the defendants and had obtained an unfair advantage by using that position — Whether undue influence induced by a person not a party to the contract — Contracts Act 1950, s 16

This is an application by the third and fourth defendants to set aside judgment in default of appearance obtained by the plaintiff. The question before the court is whether there is an affidavit stating facts showing a defence on the merits, viz the question of undue influence.

The plaintiff is at all material times a banker carrying on business at its head office at No 11A Jalan Raja Chulan, Kuala Lumpur. The first and second defendants were at all material times partners of a firm carrying on business under the firm's name of Syarikat Samaria Supply with its registered address at No 8B, Lot B15, Kompleks Batu, Jalan Murai Satu, Kuala Lumpur. They were at all material times the customers of the plaintiff. By a letter of a guarantee executed by the first and second defendants and by a second letter of guarantee executed by the third and fourth defendants, the four defendants agreed to guarantee payment of all moneys due and payable by Syarikat Samaria Supply to the extent of $30,000 for principal together with interest, commission and bank charges. Pursuant to the letters of guarantee the plaintiff made advances to Syarikat Samaria Supply, which together with interest and banking charges amounted to $30,791.87 with further interest thereon. The plaintiff through their solicitors demanded payment of the said sum due but the defendants failed to pay the said sum.

In their affidavits, the third and fourth defendants alleged that the first defendant had used undue influence to induce them to execute the guarantee agreement.

Held, dismissing the defendants' application:

(1) In order to establish undue influence, the third and fourth defendants have to prove that the plaintiff was in a position to dominate their will and thus obtained an unfair advantage by using that position. A plea of undue influence can only be raised by a party to the contract and not by a third party. There is no evidence that the plaintiff or their representatives had dominated the will of the third and fourth defendants and obtained an unfair advantage over them. In their affidavits, the third and fourth defendants merely alleged improper motive on the part of the plaintiff. This is a bare allegation which is not supported by any evidence. In any event, in the affidavits, the fourth defendant had not suggested that the plaintiff was in a position to dominate her will. There is no suggestion that the plaintiff had a real or apparent authority over her.

(2) When a party enters into a contract with another and that party was induced by undue influence by a person who is not a party to the contract, the contract is not enforceable. This conclusion is not inconsistent with s 16 of the Contracts Act 1950. It is based on the common law and should be considered as a principle of law in addition to what is provided in s 16 especially in cases of bank guarantees.

(3) In their affidavits, the third and fourth defendants merely made bare allegations of undue influence induced by the first defendant. No particulars of undue influence were given in the affidavits. A mere allegation is not sufficient to raise a defence of undue influence.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh defendan ketiga dan keempat untuk mengenepikan penghakiman keingkaran kehadiran yang diperolehi oleh plaintif. Soalon di depan mahkamah ialah sama ada terdapat satu afidavit yang menyatakan fakta yang menunjukkan pembelaan atas merit, iaitu soalon pengaruh tak wajar.

Plaintif pada masa yang material adalah sebuah bank yang mengalankan perniagaan di ibu pejabatnya di No 11A Jalan Raja Chulan, Kuala Lumpur. Defendan pertama dan kedua pada masa yang material adalah pekongsi-pekongsi sebuah firma yang berniaga di bawah nama Syarikat Samaria Supply dengan alamat berdaftarnya di No 8B, Lot B15, Kompleks Batu, Jalan Murai Satu, Kuala Lumpur. Pada masa yang material, mereka adalah pelanggan plaintif. Melalui satu surat jaminan yang dilaksanakan oleh defendan pertama dan kedua dan melalui satu surat jaminan kedua yang dilaksanakan oleh defendan ketiga dan keempat, keempat-empat defendan bersetuju menjamin pembayaran semua wang yang harus dibayar oleh Syarikat Samaria Supply setakat $30,000 untuk pokok bersama bunga, komisyen dan bayaran bank. Mengikut surat-surat jaminan itu plaintif mendahulukan wang kepada Syarikat Samaria Supply, yang bersama dengan bunga dan bayaran bank berjumlah $30,791.87 dengan bunga lanjut di atasnya. Plaintif, malalui peguamcaranya, menuntut bayaran jumlah tersebut tetapi defendan gagal membayar jumlah itu.

Dalam afidavit mereka, defendan ketiga dan keempat mendakwa bahawa defendan pertama telah menggunakan pengaruh tak wajar untuk mendorong mereka melaksanakan perjanjian jaminan itu.

Diputuskan, menolak permohonan itu:

(1) Untuk menunjukkan pengaruh tak wajar, defendan ketiga dan keempat mesti membuktikan bahawa plaintif berada dalam kedudukan untuk menguasai kuasa mereka dan lantaran itu memperolehi faedah tidak adil dengan menggunakan kedudukan itu. Rayuan pengaruh tak wajar hanya boleh didirikan oleh satu pihak kepada satu kontrak dan bukan satu pihak ketiga. Tidak terdapat keterangan bahawa plaintif atau wakil mereka telah menguasai kuasa akal defendan ketiga dan keempat dan memperolehi faedah tidak adil di atas mereka. Di dalam afidavit mereka, defendan ketiga dan keempat cuma mendakwa niat tidak betul pada pihak plaintif. Ini adalah satu dakwaan yang kosong yang tidak disokong oleh apa-apa keterangan. Apa sekali pun, dalam afidavit itu, defendan keempat tidak membuat saranan bahawa plaintif berada dalam kedudukan untuk menguasai kuasa akalnya. Tidak ada saranan bahawa plaintif mempunyai kuasa sebenar atau ketara ke atasnya.

(2) Apabila satu pihak memasuki satu kontrak dengan pihak lain dan pihak itu didorong oleh pengaruh tak wajar oleh seorang yang bukan satu pihak kepada kontrak itu, kontrak itu tidak boleh dilaksanakan. Kesimpulan ini tidak bercanggah dengan s 16 Akta Kontrak 1950. Ia berdasarkan 'common law' dan harus dipertimbangkan sebagai satu prinsip undang-undang tambahan kepada apa yang diperuntukkan dalam s 16, lebih-lebih lagi dalam kes-kes jaminan bank.

(3) Di dalam afidavit mereka, defendan ketiga dan keempat cuma membuat dakwaan kosong tentang pengaruh tak wajar yang digunakan oleh defendan pertama. Tidak ada butir-butir tentang pengaruh tak wajar yang diberikan di dalam afidavit itu. Satu dakwaan semata-mata tidak mencukupi untuk mendirikan pembelaan pengaruh tak wajar.]

Cases referred to

1 *Evans* v *Bartlam* [1937] AC 473 (refd)
2 *Bank Bumiputra Malaysia* v *Majlis Amanah Ra'ayat* [1979] 1 MLJ 23 (refd)
3 *Bank of Montreal* v *Jane Jacques Stuart & Anor* [1911] AC 120 (folld)
4 *John Wallingford* v *Mutual Society* (1880) 5 App Cas 685 (folld)
5 *Credit Corp (Malaysia) Bhd* v *Tuanku Hishamuddin bin Tuanku Laksamana Nasir* (Kuala Lumpur Civil Suit No C 5708 of 1985) (unreported) (refd)

Legislation referred to

Contracts Act 1950 s 16

GN Chandran for the third and fourth defendants.
KO Tang for the plaintiff.

Cur Adv Vult

Zakaria Yatim J: This is an application by the third and fourth defendants to set aside judgment in default of appearance obtained by the plaintiff on 20 December 1984 against them.

The application was heard in chambers. After reading the affidavits and after hearing the submissions of counsel for the defendants and for the plaintiff, I dismissed the application with costs.

On the application of counsel for the defendants, I adjourned the matter into open court for further argument.

After the hearing in open court, Mr Chandran, counsel for the defendants, conceded that the judgment obtained by the plaintiff was a regular judgment. The question for the court to consider now is whether there is an affidavit of merits, that is an affidavit stating facts showing a defence on the merits. (*Evans* v *Bartlam*[1] and *Bank Bumiputra Malaysia* v *Majlis Amanah Ra'ayat.*[2])

On the question of defence on the merits, Mr Chandran asked the court to consider only one point, viz the question of undue influence. Before considering this point I think it is relevant to set out the facts briefly.

The plaintiff is at all material times a banker carrying on business at its head office at No 11A, Jalan Raja Chulan, Kuala Lumpur. The first and second defendants were at all material times partners of a firm carrying on business under the firm's name of Syarikat Samaria Supply with its registered address at No 8B, lot B15, Kompleks Batu, Jalan Murai Satu, Kuala Lumpur. They were at all material times the customers of the plaintiff. By a letter of guarantee executed by the first and second defendants on 22 April 1982 and by a second letter of guarantee executed by the third and fourth defendants on the same date, the four defendants agreed to guarantee payment of all moneys due and payable by Syarikat Samaria Supply to the extent of $30,000 for principal together with interest, commission and bank charges. In pursuance of the letters of guarantee the plaintiff made advances to Syarikat Samaria Supply, which together with interest and banking charges amounting to $30,791.87 as at 12 December 1983 with further interest thereon at the rate of 7.5% pa with monthly rests from 1 December 1983 to the date of realization. The plaintiff, through their solicitors, demanded payment of the said sum due but the defendants failed to pay the said sum.

I shall now examine the affidavits filed by the third defendant. In her affidavit affirmed on 16 March 1985 (third defendant's first affidavit), the third defendant averred that the first defendant called at her residence at No 507, Taman Melawati, Ulu Kelang, and produced a blank guarantee agreement and used undue influence to execute the guarantee agreement without the presence of any witness. The amount to be guaranteed was not stated in the guarantee agreement. She went on to state: 'I have to stand as a guarantor for the loan applied by the first and second defendants without any explanation of the contents to me . . . '. She said that she was 'stunned' and 'greatly troubled' when on 14 February 1985 she was served with a copy of the judgment in default of her appearance which had been obtained against her. She said that she had a good defence on the merits.

In her second affidavit (third defendant's second affidavit) affirmed on 20 August 1985, the third defendant reiterated what she said in her first affidavit, that is she executed a blank guarantee agreement under the undue influence of the first defendant. She said that she insisted that the guarantee agreement be executed in the presence of the bank's representative but the first defendant, 'by his misrepresentation', told her that he would make the proper arrangement for the loan and that she had to execute the guarantee agreement only by attesting her signature and the rest would be filled up by the first defendant.

I shall next consider the fourth defendant's affidavit. In her affidavit affirmed on 16 March 1985 (fourth defendant's first affidavit), the fourth defendant averred that she was served with the judgment in default of appearance on 20 December 1984. According to her sometime in 1982 on an election day, the counting of ballot papers was in progress at the rest house in Grik. At about 9.30pm on that day the first defendant came to see her and asked her 'to sign blank forms as guarantor for a loan the defendant intended to apply'. She said no others were present at that time and the 'contents of the said guarantee agreement were not explained' to her. She went on to state in the affidavit that she was

'stunned and great troubled' when she was served with a copy of the judgment in default of her appearance on 14 February 1985. She said that the first and second defendants were using the loan for their own personal use and she was not aware of whatever transactions that had taken place.

In her second affidavit affirmed on 20 August 1985 (fourth defendant's second affidavit), the fourth defendant averred that 'the blank guarantee agreement was executed under undue influence by the first defendant'. She insisted that the guarantee agreement be executed in the presence of the bank's representative but 'the first defendant by his misrepresentation' said that he would make the proper arrangement to obtain the loan and that she had to execute the guarantee agreement only by attesting her signature.

In her third affidavit affirmed on 26 October 1985 (fourth defendant's third affidavit), the fourth defendant averred that she is the mother of the third defendant. The first defendant is her son-in-law. They were married sometime in 1979. The fourth defendant repeated the story how the first defendant came to see her at the rest house in Grik and asked her to sign the blank form. It was election day and her husband, who was then the Menteri Besar, was in Ipoh awaiting the election results. She said that she told the first defendant that she did not know why the first defendant wanted to borrow money. She further said that as her husband was in Ipoh, she asked the first defendant to come again the next day. The first defendant told her that he had an urgent matter in Kuala Lumpur and that he was leaving for Kuala Lumpur that night. According to her, everybody was busy with the election results and she was not given the reason for signing the guarantee form. She added that it was never explained to her and she did not fully understand what she was doing. She said that she asked for explanations but the first defendant told her that his wife, the third defendant, had already signed the guarantee form. She said that the first defendant told her that he would explain about his business venture at a later time. She added that she was not given any explanation of the true nature and effect of entering into the guarantee and the serious consequences that might ensue if there was a default by the first defendant. The only explanation given to her was by the third defendant who said that the first defendant together with another friend, the second defendant, had formed one company to venture into business. The fourth defendant said that the advice given to her by her daughter, the third defendant, was not independent advice and added that her daughter 'was not a competent and honest adviser acting solely' in her interest. She went on to state in the same affidavit that she did not have the opportunity of seeking her husband's advice on the matter. In the same affidavit, she averred further as follows:

> The plaintiff's representative or servant and/or agents had improper motives in having the guarantee forms executed in an improper manner which resulted in the first defendant to induce me and the third defendant who had no experience of our own and with no one from the plaintiffs or any other group to advice us. The first defendant was in a position which disqualified him from offering independent advice to me. It was a transaction of which the plaintiff must have known that no person of intelligence and experience could have been induced to enter and that is why the guarantee was not even witnessed by their own staff.
>
> Based on the confidence given by the first defendant and the third defendant I duly signed the guarantee form even without any single consideration in favour of myself.

Having examined the third and fourth defendants' affidavits, I have to consider whether there is a defence of undue influence in this case.

Under s 16 of the Contracts Act 1950, a contact is said to be induced by undue influence where the relations subsisting between the parties to the contract are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. A person is deemed to be in a position to dominate the will of another where that person holds a real or apparent authority over the other. Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears on the face of it to be unconscionable, the burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

In order to establish undue influence, the third and fourth defendants have to prove that the other party to the contract, that is the plaintiff, was in a position to dominate their will and that the other party had obtained an unfair advantage by using that position. A plea of undue influence can only be raised by a party to the contract and not by a third party. See Pollock & Mulla, *Indian Contract & Specific Relief Acts* (9th Ed) pp 138 and 139.

In the present case the contract in question is a letter of guarantee dated 22 April 1982 executed by the third and fourth defendants in favour of the plaintiff. There is no evidence that the plaintiff or their representatives had dominated the will of the third and fourth defendants and obtained an unfair advantage over them. In para 15 of the fourth defendant's third affidavit the fourth defendant merely alleged improper motive on the part of the plaintiff. This is a bare allegation which is not supported by any evidence. In any event in both paras 15 and 16 quoted above the fourth defendant had not suggested that the plaintiff was in a position to dominate her will. There is no suggestion that the plaintiff had a real or apparent authority over her.

In their affidavits, the third and fourth defendants alleged that the undue influence was induced by the first defendant. Such allegation is not relevant under

s 16 of the Contracts Act 1950. The question that arises here is whether a defence of undue influence can be raised when the undue influence is alleged to be induced by a person, in this case the first defendant, who is not the other party to the contract?

In this connection, Mr Chandran, counsel for the defendants, cited a Privy Council decision *Bank of Montreal* v *Jane Jacques Stuart & Anor*[3] which was an appeal from the Supreme Court of Canada. In that case an action was brought by Jane J Stuart against the Bank of Montreal to set aside a series of transactions in relation to a company over a period of eight years resulting in her surrendering to the bank all her extensive estate, real and personal. She was left without any means of her own. She was an invalid and had acted throughout in passive obedience to her husband's directions. She had no means of forming an independent judgment. The Privy Council decided that the series of transactions could not stand because she was in fact wholly under her husband's influence. Lord MacNaghten in delivering the judgment of the Privy Council said at p 137.

> It may well be argued that when there is evidence of overpowering influence and the judgment brought about is immoderate and irrational, as it was in the present case, proof of undue influence is complete. However that may be, it seems to their Lordships that in this case there is enough, according to the recognized doctrine of Courts of Equity, to entitle Mrs Stuart to relief. Unfair advantage of Mrs Stuart's confidence in her husband was taken by Mr Stuart.

From the *Bank of Montreal* case[3] it appears that when a party enters into a contract with another and that party was induced by undue influence by a person who is not a party to the contract, the contract is not enforceable. In my view this conclusion is not inconsistent with s 16 of the Contracts Act 1950. It is based on the common law and should be considered as a principle of law in addition to what is provided in s 16 especially in cases of bank guarantees.

In their affidavits, the third and fourth defendants merely made bare allegations of undue influence induced by the first defendant. No particulars of undue influence were given in the affidavits. In my view a mere allegation is not sufficient to raise a defence of undue influence. In *John Wallingford* v *Mutual Society*,[4] Lord Blackburn, in his speech at p 704 said:

> I think that when the affidavits are brought forward to raise that defence they must, if I may use the expression, condescend upon particulars. It is not enough to swear, 'I say I owe the man nothing'. Doubtless, if it was true, that you owed the man nothing, as you swear, that would be a good defence. But that is not enough. You must satisfy the judge that there is reasonable ground for saying so. So again, if you swear that there was fraud, that will not do. It is difficult to define it, but you must give such an extent of definite facts pointing to the fraud as to satisfy the judge that those are facts which make it reasonable that you should be allowed to raise that defence. And in like manner as to illegality, and every other defence that might be mentioned.

In the circumstances, I am of the view that the third and fourth defendants have failed to raise the question of undue influence as a triable issue.

They also made allegation of misrepresentation by the first defendant. But on reading their affidavits I do not find anything that constitutes misrepresentation. They did not state the representation made by the first defendant was false. They did not state that the first defendant intended to deceive them. The first defendant did not cause them to make a mistake as to the substance of the agreement. See s 18 of the Contracts Act 1950. In any event no particulars of misrepresentation were given. It is only a bare allegation.

I shall next consider one other point raised in the defendant's affidavit, viz they alleged that they signed the guarantee agreement in blank. I have examined the letter of guarantee and I find that the date is in blank, the name of the borrower is in blank, the amount in blank and the space for the signature of the guarantors and their particulars are in blank. The rest of the letter of guarantee contains the terms and conditions of the guarantee in printed words. In their affidavit they admitted that they knew that they were signing a letter of guarantee. They also knew that the first and second defendants were the borrowers. In her affidavit on 1 July 1985 on behalf of the plaintiff, Puan Zakiah bte Ramli said:

> I verily believe that being an educated woman and daughter of a former State Menteri Besar, the third defendant voluntarily with full knowledge of the contents of the guarantee signed the said letter of guarantee in favour of the plaintiff.

It is not in dispute that the third defendant is highly educated and at the material times, she was holding the position of Director of the Registry of Motor Vehicles, Perak. She is the daughter of the then Menteri Besar of Perak. The fourth defendant is the wife of the then Menteri Besar of Perak. She is not an illiterate person and she knew what document she was signing. From her affidavit she said that her daughter, the third defendant, had explained the documents to her.

As I said earlier the allegation of misrepresentation was a bare allegation and the allegation of misrepresentation did not in fact constitute misrepresentation. Therefore in the absence of fraud or misrepresentation, the letter of guarantee is valid despite the fact the particulars were not filled in at the time it was signed by the third and fourth defendants. See *Credit Corp (Malaysia) Bhd* v *Tuanku Hishamuddin bin Tuanku Laksamana Nasir*.[5]

For the reasons stated above, I confirm the order I made in chambers and dismiss the defendants' application with costs. The third and fourth defendants will pay the costs of further argument in open court to the plaintiff.

Application dismissed.

Solicitors: *Thevin Chandran Siva & Jamal; Ariff & Co.*

Reported by *Kevin Mathews*

Official Assignee of the Property of Senator Ibrahim bin Haji Yaakob, Bankrupt v Siti Ramlah bte Bajau

HIGH COURT (KUALA LUMPUR) — BANKRUPTCY NO 168 OF 1980
ZAKARIA YATIM J
27 SEPTEMBER 1990

Bankruptcy — Transfer of land to respondent wife — For love and affection — Transferor became bankrupt within two years of transfer — Transferor died — Whether transfer was voluntary settlement and void against Official Assignee — Respondent claimed transfer within exceptions — Bankruptcy Act 1967, s 52 — Bankruptcy Act 1869 [UK], s 91 — Bankruptcy Act 1914 [UK], s 42

Malay Customary Law — Harta sepencarian — Whether respondent entitled to half share

This is an application by the Official Assignee, inter alia, for:
(1) a declaration that the transfer of the land comprised in Grant No 11027, lot No 8, mukim Batu ('the said land'), by the bankrupt to his wife Siti Ramlah bte Bajau ('the respondent') on 22 December 1978 was a voluntary settlement and is void against the Official Assignee under s 52 of the Bankruptcy Act 1967; and
(2) an order that the Pendaftar Geran-Geran Tanah, Wilayah Persekutuan ('the Pendaftar'), the proper registering authority, do cancel the said transfer.

On 27 October 1980, receiving and adjudication orders were made against the bankrupt on the petition of Bank of America National Trust and Savings Association. During investigation it was discovered that the bankrupt had transferred the said land to his wife, the respondent, on 22 December 1978 for love and affection. The Assistant Official Assignee contended that the transfer of the said land by the bankrupt was a voluntary settlement or transfer within the meaning of s 52 of the Bankruptcy Act 1967, and that as the transfer was made within two years prior to the transferor becoming a bankrupt, such transfer was absolutely void against the Official Assignee. The respondent denied that the transfer was a voluntary settlement and contended that the settlement of the said land came within the exceptions to s 52 of the Bankruptcy Act 1967 since it was made on or for the wife of the settlor which was accrued to the settlor after marriage in the right of his wife. She further claimed to be entitled under her personal law and pursuant to the Malay 'adat' law to have one-half share of the said land as 'harta sepencarian' at the time of the bankrupt's death.

Held, allowing the application to the extent indicated below:

(1) The words 'property which has accrued to the settlor after marriage in right of his wife ...' in s 52 of the Bankruptcy Act 1967, mean that the property must be in the name of the wife. It is immaterial whether she acquired it before or after the marriage. The property is accrued to the husband solely by virtue of his position as husband when the wife dies intestate.

(2) After considering the facts in the present case, the court found that the respondent's case did not come under any of the exceptions to s 52 of the Bankruptcy Act 1967. In the circumstances, the transfer of the said land to the respondent was absolutely void against the Official Assignee under s 52 of the Bankruptcy Act 1967.

(3) Once it is established that property is acquired during the subsistence of the marriage out of the joint resources of the husband and wife, a presumption arises that the property is 'harta sepencarian'. In view of the evidence contained in the respondent's affidavit, there was a presumption that the said land was 'harta sepencarian'. There was no evidence before the court to rebut the presumption. The court was of the opinion that a wife can only claim her share of 'harta sepencarian' when she is divorced by her husband or when the husband is dead. Hence, the respondent was entitled to one-half share of the said land under 'harta sepencarian' upon the death of her husband, and if the said land was sold to pay the creditor or creditors of the bankrupt, she was entitled to receive half of the proceeds of the sale of the said land and her share of the proceeds of the sale could not be used to pay her late husband's creditor or creditors.

[Bahasa Malaysia summary

Ini adalah satu permohonan oleh Pegawai Pemegang Harta, antara lain, untuk:

(1) satu deklarasi bahawa pemindahan tanah yang terkandung di dalam Geran No 11027, lot No 8, mukim Batu ('tanah tersebut'), oleh si bankrap kepada isterinya Siti Ramlah bte Bajau ('responden itu') pada 22 Disember 1978 adalah satu 'settlement' sukarela dan adalah tidak sah terhadap Pegawai Pemegang Harta di bawah s 52 Akta Kebankrapan 1967; dan

(2) satu perintah bahawa Pendaftar Geran-Geran Tanah, Wilayah Persekutuan ('Pendaftar itu'), pihak mendaftar yang teratur, membatalkan pemindahan itu.

Pada 27 Oktober 1980, perintah penerimaan dan penghukuman telah dibuat terhadap si bankrap melalui petisyen Bank of America National Trust and Savings Association. Semasa penyiasatan, telah dijumpai bahawa si bankrap telah memindahkan tanah tersebut kepada isterinya, responden itu, pada 22 Disember 1978 kerana kasih dan sayang. Penolong Pegawai Pemegang Harta menghujah bahawa pemindahan tanah tersebut oleh si bankrap adalah satu 'settlement' sukarela atau pemindahan di bawah makna s 52 Akta Kebankrapan 1967, dan bahawa kerana pemindahan dibuat di dalam dua tahun sebelum pemindah menjadi bankrap, pemindahan sedemikian adalah tidak sah sama sekali terhadap Pegawai Pemegang Harta. Responden menafikan yang pemindahan itu adalah satu 'settlement' sukarela dan menghujah bahawa 'settlement' tanah tersebut termasuk di dalam kecualian kepada s 52 Akta Kebankrapan 1967, memandangkan yang ia telah dibuat ke atas atau untuk isteri pembuat 'settlement' yang terakru kepada pembuat 'settlement' selepas perkahwinan dalam hak isterinya. Responden seterusnya menuntut yang ia berhak di bawah undang-undang persendiriannya dan mengikut undang-undang adat Melayu kepada setengah bahagian tanah tersebut sebagai harta sepencarian pada masa kematian si bankrap.